

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:18-cr-10079-JDB-1

CHRISTOPHER ANDREW WEST,

Defendant.

ORDER CONSTRUING MOTION FOR EXTENSION OF
TIME AS 28 U.S.C. § 2255 MOTION
AND
DIRECTING CLERK TO TERMINATE MOTION AND
FILE DOCUMENT IN NEW CASE

On January 12, 2021, the Defendant, Christopher Andrew West, filed a *pro se* motion for an extension of time to file a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (Docket Entry (“D.E.”) 58.) For the following reasons, the Court CONSTRUES the motion as a § 2255 petition and DIRECTS the Clerk to open a new case.

Defendant asserts in his motion that he has not had an opportunity to prepare a § 2255 petition due to “lockdowns” at his prison resulting from the COVID-19 pandemic. (*Id.* at PageID 162.) He also represents that he

plan[s] to file a Motion under 28 U.S.C. § 2255 to address the extraordinarily long sentence. The sentencing judge specifically stated his desire to sentence Mr. West under 180 months and if Mr. West could bring to the court’s attention other cases where this was accomplished, it would be considered. That is the subject of the motion.

(*Id.* at PageID 161-62.)

In *United States v. Asakevich*, 810 F.3d 418 (6th Cir. 2016), the Sixth Circuit held that district courts do not have jurisdiction to grant a prisoner an extension of time to file a § 2255 petition before such a petition is actually filed. *Asakevich*, 810 F.3d at 423-24. The court suggested, however, that if the extension motion contains “sufficient details about the

proposed § 2255 action,” the district court may “fairly construe the extension motion as a § 2255 action.” *Id.* (citing *Castro v. United States*, 540 U.S. 375, 381–83 (2003)).

West’s motion for an extension of time contains details about the subject matter of his planned § 2255 petition. Therefore, the Court CONSTRUES the motion as a § 2255 petition. The Clerk is DIRECTED to TERMINATE the motion at D.E. 58 and FILE the document as the case-initiating pleading in a new case.

IT IS SO ORDERED this 14th day of January 2021.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE